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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1962

## No. 951

JORGE AMERICO UNGO,
*Petitioner,*
vs.
IMMIGRATION AND NATURALIZATION SERVICE,
*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI**
**to the United States Court of Appeals**
**for the Ninth Circuit**

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# In the Supreme Court
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OCTOBER TERM, 1962

No.

JORGE AMERICO UNGO, *Petitioner,*

vs.

IMMIGRATION AND NATURALIZATION SERVICE, *Respondent.*

## PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

The petitioner, Jorge Americo Ungo, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the decision of the Immigration and Naturalization Service ordering the deportation of petitioner from the United States.

## OPINIONS BELOW

The decision of the Immigration and Naturalization Service ordered deportation of the petitioner, pursuant to Section 241(a)(1) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1251 (a)(1)), as an alien ineligible to citizenship under Section 212(a)(22) of the Act (8 U.S.C. 1182 (a)(22)), and denied his request for discretionary relief under Section 212(c), (8 U.S.C. 1182(c)). The opinion of the Court of Appeals has not as yet been officially reported, but is printed in Appendix A hereto, infra, pp. i-vi.

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## JURISDICTION

The judgment of the Court of Appeals was filed and entered January 10, 1963 (Appendix A, p. vii). Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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## QUESTIONS PRESENTED

1. Did the President of the United States retain the power to exempt permanent resident aliens from military service subsequent to the effective date of the Universal Military Training and Service Act of 1951?

2. Is an alien excludable from the United States where he has not been warned of this consequence prior to being granted an exemption from military service pursuant to a treaty between the United States and the country of which the alien is a national?

3. Does Section 106 of the Immigration and Nationality Act of 1952 (75 Stat. 651, 8 U.S.C.A. 1105a), confer original jurisdiction on the Court of Appeals to review a denial of discretionary relief under Section 212(c) of the Act?

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## STATUTES INVOLVED

*Selective Service Act of 1948* (Public Law 759), 62 Stat. 604, June 24, 1948.

*Executive Order No. 9992*, 13 F.R. 5033.

*Public Law 51*, 65 Stat. 75, June 19, 1951, 50 U.S.C. App. 453 Supp. V (1946 Ed.);

*Executive Order No. 10292*, September 28, 1951, 16 F.R. 1843;

*Immigration and Nationality Act of 1952*, Act of June 27, 1952, 66 Stat. 163:

Section 101(a)(19); (8 U.S.C. 1101(a)(19));

Section 106 (as enacted September 26, 1961), Public Law 87-301, 8 U.S.C.A. Sec. 1105a;

Section 212(a)(22), (8 U.S.C. 1182(a)(22));

Section 212(c), (8 U.S.C. 1182(c));

Section 241(a)(1);

Section 315 (8 U.S.C. 1426);

(The foregoing pertinent statutes are set forth in Appendix B, hereto, infra, p. viii).

## STATEMENT OF THE CASE

Petitioner is a native and citizen of El Salvador. He was admitted to the United States for permanent residence for the first time on September 9, 1948. He was readmitted to the United States for permanent residence on September 5, 1952, March 2, 1958 and December 19, 1959.

Petitioner registered for selective service on September 27, 1949. He was found acceptable for induction. On October 21, 1952, the Embassy of El Salvador requested that the Secretary of State of the United States defer petitioner from military service. On November 26, 1952 the application was approved. Petitioner was thereupon classified IV-C as an alien exempt from service. Thereafter, and on May 20, 1953, the Selective Service Board sent petitioner Form C-294 (Request for Exemption from Military Service), with instructions to sign and return to the Board, which was done on June 15, 1953. The petitioner's Selective Service classification remained IV-C, as a Treaty Alien.

An Order to Show Cause was issued by the Immigration and Naturalization Service on November 14, 1960, charging petitioner as subject to deportation pursuant to Section 241(a)(1), (8 U.S.C. 1251 (a)(1)), (see Appendix B), in that at the time of his last entry (December 19, 1959) he was excludable as an alien ineligible to citizenship under Section 212(a)(22) of the Act (8 U.S.C. 1182(a)(22)). (Appendix B). A hearing was held by the Immigration and Naturalization Service at San Francisco, California,

and the Special Inquiry Officer sustained the charge. A request for discretionary relief under Section 212 (c), (8 U.S.C. 1182(c)) was denied. (Appendix B). On July 11, 1961 the Board of Immigration Appeals dismissed the appeal.

A Petition for Review of this decision was filed in the United States District Court in and for the Northern District of California, Southern Division, on August 18, 1961, and such petition was transferred, without hearing, to the Court of Appeals for the Ninth Circuit, pursuant to 8 U.S.C. Section 1105a, Act of September 26, 1961, 75 Stat. 651. The Court of Appeals rendered its decision affirming the order of deportation of the Immigration and Naturalization Service, judgment entered January 10, 1963 (Appendix A, infra, p. vii).

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## REASONS FOR GRANTING CERTIORARI

This writ of certiorari is sought because the issues in this case raise important questions of interpretation of the Universal Military Training and Service Act of 1951, the Executive Orders purporting to implement this law, the Immigration and Nationality Act of 1952 as it relates to aliens exempted from military service, and Section 106 of said Act relating to original jurisdiction given to Courts of Appeal by the 1961 amendment. In addition, the decision below is in conflict with decisions of the Court below as well as decisions of other Circuits.

**1. THE DECISION OF THE COURT BELOW IN EFFECT HOLDS THAT THE PRESIDENT OF THE UNITED STATES HAD THE POWER TO EXEMPT PERMANENT RESIDENT ALIENS FROM TREATY COUNTRIES FROM MILITARY SERVICE AFTER THE CONGRESS HAD DIRECTED OTHERWISE IN THE UNIVERSAL MILITARY TRAINING AND SERVICE ACT OF 1951.**

The Universal Military Training and Service Act of 1951 enumerated certain classes of aliens exempt from training and military service. (Appendix B, p. xii). This section contains the express language that "aliens admitted for permanent residence in the United States shall not be so exempted." Despite this language the President of the United States issued Executive Order 10292 (Appendix B, p. xiv) exempting permanent resident *treaty aliens* from such service. The Selective Service Regulations incorporated the provisions of this order.

Petitioner, although a permanent resident of the United States, as an alien from El Salvador which had a treaty with the United States exempting its nationals from military service in the United States, was classified exempt from military service. It is contended that the President of the United States exceeded his power in Executive Order 10292 in purporting to exempt *treaty aliens* from military service. Therefore, the "exemption" was a nullity. Accordingly, the bar against obtaining United States citizenship prescribed by Section 315 of the Immigration and Nationality Act of 1952 (Appendix B), is inapplicable. Likewise, the exclusion bar of Section 212 (a)(22), (Appendix B), of the Act is inapplicable.

In *United States v. Rumsa,* 212 F.2d 927, 932, Cert. Den. 348 U.S. 838, the Court of Appeals for the Seventh Circuit interpreting the exemption provisions of said Act held that permanent resident aliens were not exempt from military training after the 1951 amendments, whether *treaty aliens* or not. In *Petition of Rego,* 289 F. 2d 174 (1961), the Court of Appeals for the Third Circuit considered the same question and held that the 1951 amendments to the Selective Service Act of 1948 eliminated exemptions for all permanent resident aliens, including *treaty aliens.* The Court said (pp. 176-177):

> "We read the final clause of the section as meaning that a formal request for exemption by a member of the class of aliens authorized to obtain such relief on application debarred the applicant from future naturalization. Indeed, the reference in that clause to 'any alien who makes such application logically included only aliens who were not permanent residents, for only they were authorized to claim this exemption. Thus, the debarment clause, like the exemption clause which it qualified, simply did not pertain to the alien who had acquired permanent residence and had been in the same selective service category as a citizen."

In *United States v. Gredzens,* 125 F. Supp. 867, (1954), the District Court in Minnesota followed the *Rumsa* decision, supra, holding at page 871:

> "Upon such further consideration, the Government's objection has been sustained. As the defendant in this case was an alien admitted for

permanent residence in the United States, he was by Act of Congress declared ineligible for exemption as an alien. Therefore, the procedures set forth in this memorandum are inapplicable to him, and as to him they are void.

"It is well established that regulations of a department cannot have the effect of amending the law; they may aid in carrying the law, as it exists, into execution, but they cannot change its positive provisions. U.S. v. Two Hundred Barrels of Whiskey, 95 U.S. 571, 24 L. Ed. 491."

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**2. THE DECISION OF THE COURT BELOW IS CONTRARY TO THE DECISION OF THIS COURT IN MOSER v. UNITED STATES, 341 U.S. 41 (1951).**

The *Moser* decision established the proposition that to bar an alien from citizenship because of an exemption from military service, "nothing less than an intelligent waiver is required by elementary fairness. *Johnson v. United States*, 318 U.S. 189, 197, 87 L. Ed. 704. To hold otherwise would be to entrap petitioner." Here, petitioner was informed by his Consul of the treaty between his country and the United States, by which nationals of each country were exempted from military service in the other country. The El Salvador Embassy in Washington requested a "deferment" for petitioner, and pursuant thereto the United States Department of State granted this request. Petitioner was then classified IV-C by the local selective service board as a *treaty alien* on February 10, 1953. On May 20, 1953, the local board sent petitioner Form C-294

with a letter advising that it must be signed and returned to the local board if he wanted to be considered for exemption from military service as a treaty alien, calling attention to Section 315 of the Immigration and Nationality Act. (8 U.S.C.A. 1426). Thus, four months *after* petitioner was classified IV-C by the Selective Service Board he was for the first time warned of the citizenship bar of Section 315(a) of the Immigration and Nationality Act of 1952 and Section 4(a) of the Universal Military Training and Service Act, Public Law 51, 65 Stat. 75, June 19, 1951, 50 U.S.C. App. 453 Supp. V (1946 Ed.) (Appendix B). By this late date, according to Judge Goodman in *Petition of Carvajal*, (ND Cal., 154 F. Supp. 525), 1957, he was already barred from citizenship. As Judge Goodman said, at page 528:

> "There is considerable justification for petitioner's contention that he was misled as to the significance of Form C-294. For it does not appear that this form served any purpose whatsoever. It constituted no more than a reiteration of a request for exemption from military service as a treaty alien which had previously been made and granted * * *."

Under the *Moser* test, petitioner did not have an opportunity to make an intelligent waiver by a standard of elementary fairness. By the time he was first informed of the effect of ineligibility for citizenship *after* being exempted from military service as a treaty national, he was already barred from citizenship according to *Petition of Carvajal*, supra. In other

words, he was barred if he did, and he was barred if he did not comply with the Selective Service Board's request to execute the Form C-294.

It is further contended that the Court below erred in not finding that the *Moser* doctrine requires the Government to warn a prospective applicant for exemption from military service that if he selects exemption he will not only not be eligible for citizenship but also that he will be barred from ever returning to the United States for permanent residence in view of Section 212(a)(22) of that Act (Appendix B). Petitioner here first learned of this disability one year *after* he was last admitted to the United States, when he was served with the Order to Show Cause in deportation hearing proceedings. The standard of "elementary fairness" prescribed by *Moser* dictates that the Government should warn of this disastrous consequence to aliens claiming military exemption under a Treaty with the United States.

**3. THE DECISION OF THE COURT BELOW IS CONTRARY TO THE DECISIONS OF OTHER CIRCUIT COURTS HOLDING THE CIRCUIT COURTS WITHOUT ORIGINAL JURISDICTION TO CONSIDER APPLICATIONS FOR DISCRETIONARY RELIEF UNDER THE IMMIGRATION AND NATIONALITY ACT.**

In *Foti v. Immigration and Naturalization Service*, (308 F.2d 779), the Court of Appeals for the Second Circuit en banc held that that Court did not have original jurisdiction under Section 106(a) of the Immigration and Nationality Act (8 U.S.C. 1105a(a)) (Appendix B) to review an order of the Immigration and Naturalization Service denying petitioner's application for the discretionary relief of suspension of deportation. The Court cited with approval the decision of *Zupicich v. Esperdy*, S.D.N.Y., 207 F. Supp. 574, and declined to follow the decisions of the Seventh Circuit in *Blagaic v. Flagg*, 304 F.2d 823 (1962), and *Roumeliotis v. Immigration and Naturalization Service*, 304 F.2d 453 (1962). The *Blagaic* case relates to the discretionary relief of withholding of deportation under Section 243(h) of the Immigration and Nationality Act of 1952, and *Roumeliotis* to denial of a first preference visa under Section 203 (a)(1)(A), 8 U.S.C. 1153(a)(1). The *Zupicich* decision, interestingly enough, called attention to two decisions of the Ninth Circuit—*Giova v. Rosenberg*, 308 F.2d 347, concerning a motion to reopen deportation proceedings, and *Mai Kai Fong v. Immigration and Naturalization Service*, 305 F.2d 239, holding at page 242:—"Only final orders of deportation are subject to direct review in courts of appeals pursuant to 8 U.S.C.A., Section 1105a (a)." Citing *Giova v.*

*Rosenberg*, 9 Cir., 308 F.2d 347, decided June 15, 1962. (But see *Louie King Fong v. Immigration and Naturalization Service*, 9 Cir., 308 F2d 191, 1962). Also see *Lam Man Chi v. Bouchard*, ..... F.2d ....., decided February 26, 1963, where the Court of Appeals for the Third Circuit held that a review of the Attorney General's designation of the place of deportation must be had in the United States District Court and was not within the exclusive jurisdiction conferred on Courts of Appeals by the 1961 enactment. See *Holz v. Immigration and Naturalization Service*, 309 F.2d 452 (1962) where the Court of Appeals for the Ninth Circuit refused to take original jurisdiction to review an application for a stay of deportation.

The Court below, contrary to these decisions limiting Courts of Appeals' original jurisdiction to review of final orders of deportation, concluded that it had original jurisdiction under the 1961 Act to review the requested discretionary relief under Section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)). Because of this conflict in decisions it is submitted that certiorari is appropriate.

## CONCLUSIONS

### I

Where the President of the United States acts in excess of his power purporting to allow military exemptions in direct contradiction to a statute of Congress forbidding such exemptions, a question of grave importance is presented for the consideration of this Court. The purported exercise of this power gave an illusory and illegal "exemption" to thousands of alien permanent residents of the United States. It is contended that the question so presented can only be settled by a decision of this Court.

### II

The decision of this Court in *Moser v. United States* set out a fair waiver standard to be applied in military exemption cases, and where the alien is exempted and then informed of its effect, as here, this standard has not been met. Further, it is urged that the government has a duty in applying this fair waiver standard to warn the alien of the true price which must be paid for the purchase of such an exemption—not only ineligibility to citizenship, but ineligibility to return to the United States for permanent residence if he ever departs therafter. As stated by Mr. Justice Douglas in *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10, 68 S. Ct. 374, 92 L. Ed. 433:

> "We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile. Delgadillo v. Carmichael, 332 U.S. 388 (68 S. Ct. 10, 92 L. Ed. 17)."

## III

Finally, the question of the extent of original jurisdiction of the Circuit Courts of Appeal under Section 106(a) of the Immigration and Nationality Act (8 U.S.C. 1105a(a), Act of September 26, 1961, 75 Stat. 651), remains to be settled. The conflicts among the decisions of the Second, Third, Seventh and Ninth Circuits relating to what is encompassed by the words of the Act "all final orders of deportation" must be resolved. Only a decision of this Court can settle the issue.

For the reasons set forth, it is respectfully submitted that this petition for writ of certiorari should be granted.

Dated, San Francisco, California,
March 18, 1963.

GORDON G. DALE,
*Attorney for Petitioner.*

JACKSON & HERTOGS,
*Of Counsel.*

**(Appendices A and B Follow)**

## Appendix A

United States Court of Appeals
for the Ninth Circuit

| | |
|---|---|
| Jorge Americo Ungo, Petitioner,<br>vs.<br>Charles J. Beechie, District Director, San Francisco District, Immigration and Naturalization Service, Respondent. | No. 17,845<br>Jan. 10, 1963 |

Petition to review an order of the
Immigration and Naturalization Service

Before: Jertberg, Magruder and Browning, Circuit Judges.

Magruder, Circuit Judge.

This is a judicial review, pursuant to 8 U.S.C. § 1105a, as amended of a deportation order against petitioner issued by the Immigration and Naturalization Service. An appeal to the Board of Immigration Appeals was dismissed.

Petitioner Ungo is a native and citizen of the Central American country of El Salvador. He was born June 17, 1930. On September 9, 1948, he was first admitted to the United States as a "permanent resi-

'dent." A year later he registered under the Selective Service System. He was classified IV-E, a student. He departed for El Salvador in July, 1950, and returned two months later, this time as a non-immigrant student who, in that capacity, was not subject to the Draft Act. However, petitioner claims that he did not know that fact, nor did he know the intricacies of the applicable statute. Notwithstanding his classification IV-E, a student, on his return to the United States in September, 1950, he found awaiting him the notice calling him to serve in the United States Army because he was a "permanent resident." He explained to his draft board that was a IV-E student. The Selective Service System thereupon "dismissed my issue to serve in the United States Army." His classification was changed to IV-C.

In August, 1952, he went to El Salvador and shortly afterwards he came back to the United States, this time for "permanent residence." On October 10, 1952, his draft board classified Ungo I-A.

On October 21, 1952, the El Salvador Embassy at his instance requested the Secretary of State of the United States to approve an application for "deferment."

On February 1, 1953, Ungo wrote to his local draft board, acknowledging the receipt of a letter in which he had been notified of the favorable action by the Department of State on his application for "deferment." In this letter he stated, "Therefore, I desire to be classified in class IV-C as a treaty alien." On February 10, 1953, Ungo was put in classification

IV-C by his draft board. When the registrant's file was reviewed on May 20, 1953, the director of the Selective Service System having written that "Unless there is already on file a request for relief from military service as a treaty alien by the registrant, he should be required to submit such signed request prior to classification in Class IV-C." Form C-294 was mailed to Ungo. This form set forth the provision of § 315 of the Immigration and Nationality Act of 1952, which is in substance that an alien who applies for exemption from military service on the ground that he is an alien and who is "relieved" from such service on such ground shall be permanently ineligible to become a citizen of the United States. This may seem to some to be a harsh consequence of claiming the exemption, but it is one the Congress is plainly authorized to impose.

The content of § 315 was clearly printed upon the face of Form C-294. The record discloses that appellant is an intelligent person, a college graduate, who has excellent command of the English language. The special inquiry officer who heard the case wrote that appellant was obviously "not being entirely truthful" in saying that he signed the form in ignorance of its provisions. The Board of Immigration Appeals affirmed the finding of the special inquiry officer to the effect that Ungo knew what he was doing when he signed Form C-294 and that he thereby made a "voluntary and intelligent election between eligibility for citizenship and exemption from military service." It does not do to say that appellant had already at the

time he signed Form C-294 been granted classification IV-C as a treaty alien, and that hence his signing the form was a superfluity and irrelevant. The state director of the Selective Service System wrote on June 24, 1959, "By signing Form C-294, the registrant remained exempt from training and service in the Armed Forces of the United States and he retained his exempt classification."

Furthermore, factually speaking, the action by the draft board in classifying petitioner in category IV-C as a treaty alien relieved him of service in the army, and, as the Second Circuit said in *Petition of Skender*, 248 F.2d 92, at 95 (1957), under § 315(a) it is not required that the applicant should be "legally entitled" to be relieved from the service; "it is the fact of relief, not the legal right to it, that is determinative." See to the same effect *United States ex rel. Mario Rosio v. Shaughnessy*, 134 F. Supp. 217 (S.D. N.Y. 1954); *In re Carvajal*, 154 F. Supp. 525 (N.D. Cal. 1957).

*Moser v. United States*, 341 U.S. 41 (1951), is manifestly inapplicable, for in that case the alien was expressly advised by his consulate that signing the exemption would not affect his eligibility to become a United States citizen; the Supreme Court held that in these circumstances the alien had not "knowingly and intentionally" waived his right to become an American citizen. The present case, on its facts, is quite different.

Another somewhat technical argument made by appellant is that the President of the United States

lacked the power to grant exemption from military service to permanent resident aliens after the 1951 amendments to the Selective Service Act of 1948, and therefore that such attempted exemption was a "nullity." We find nothing in § 6(a) of the 1948 Act, as amended in 1951, nor anything in the regulation by the President, 32 CFR 1622 *et seq.*, necessarily contrary to the earlier treaty between the United States and El Salvador. Repeals by implication are not favored by the law. See *United States v. Lee Yen Tai*, 185 U.S. 213 (1902); *Johnson v. Browne*, 205 U.S. 309 (1907); *Cook v. United States*, 288 U.S. 102 (1933). The earlier provisions of the treaty with El Salvador have not been repealed by implication, and we see no objection to applying § 315 of the Immigration and Nationality Act of 1952. We do not see that the holdings in *United States v. Rumsa*, 212 F.2d 927 (C.A. 7th, 1954), and in *Petition of Rego*, 289 F.2d 174 (C.A. 3d, 1961), are inconsistent with this conclusion.

The last entry of the appellant into the United States occurred on December 19, 1959. It was a mistake to have issued the visa to him at this time under § 212(a)(22), and he should now be deported according to § 241(a) of the Immigration and Nationality Act of 1952. Appellant asserts that the principle of *Moser v. United States*, supra, 341 U.S. 41, should be applicable here, and that since the record does not indicate that petitioner was ever informed of the danger that if he claimed the exemption under § 315 he would be barred from returning to the United

States when he last left this country, he should not be held to have made "a voluntary and intelligent election" under the Act. Appellant having knowingly and intentionally waived his right to become an American citizen, we think it need not also appear that he was expressly advised of all the consequences which might flow from that waiver under other provisions of the Immigration and Nationality Act.

We hold also that the Board of Immigration Appeals made no error in its ruling to the effect that the alternative discretionary relief requested under § 212 (c) was properly denied by the special inquiry officer on the ground that it is a condition of this section that the alien must have been returning to "a lawful unrelinquished domicile of seven consecutive years." The alien left the United States in 1954 for El Salvador to obtain some "field experience," as he said. However, it appears that at the end of his first employment in El Salvador he received a second job and then a third for a brief period, and he stated at the hearing on February 23, 1961, that he returned to the United States in 1957 only "for vacation." We agree that the alien cannot show that at the time of his 1958 entry he was returning to "a lawful unrelinquished domicile of seven consecutive years."

A judgment will be entered affirming the order of deportation of the Immigration and Naturalization Service.

(Endorsed) Opinion Filed Jan. 10, 1963.

Frank H. Schmid, Clerk

United States Court of Appeals
for the Ninth Circuit

| | |
|---|---|
| Jorge Americo Ungo, Petitioner,<br>vs.<br>Charles J. Beechie, District Director, etc.,<br>Respondent. | No. 17,845 |

## JUDGMENT

Upon Petition to Review an order of the Immigration and Naturalization Service.

This Cause came on to be heard on the Transcript of the Record from the Immigration and Naturalization Service and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court that the order of the said Immigration and Naturalization Service in this Cause be, and hereby is affirmed.

Filed and entered January 10, 1963.

## Appendix B

*Selective Service Act of 1948* (Public Law 759), 62 Stat. 604, June 24, 1948:

### Registration

Section 3. "Except as otherwise provided in this title, it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder."

### Training and Service

Section 4(a). "Except as otherwise provided in this title, every male citizen of the United States, and every other male person residing in the United States, who is between the ages of nineteen and twenty-six, at the time fixed for his registration, or who attains the age of nineteen after having been required to register pursuant to Section 3 of this title, shall be liable for training and service in the armed forces of the United States. Any citizen of a foreign country, who is not deferable or exempt from training and service under the provisions of this title (other than this subsection), shall be relieved from liability for training and service under this title if, prior to his

induction into the armed forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President; but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States.

Section 4(b). Each person inducted under the provisions of subsection (a) shall serve in the armed forces for a period of twenty-one consecutive months, unless sooner discharged in accordance with standards and procedures prescribed by the Secretary of Defense."

DEFERMENT AND EXEMPTIONS

Section 6(a). "Commissioned officers, warrant officers, pay clerks, enlisted men, and aviation cadets of the Regular Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Coast and Geodetic Survey, and the Public Health Service; cadets, United States Coast Guard Academy; members of the reserve components of the armed forces, the Coast Guard, and the Public Health Service, while on active duty; and foreign diplomatic representatives, technical attaches of foreign embassies and legations, consuls general, consuls, vice consuls, and other consular agents of foreign countries who are not citizens of the United States, and members of their families, and persons in other categories to be specified by the President, residing in the United States, and who have not declared their intention to become citizens of the United States, shall not be required to be registered

under Section 3 and shall be relieved from liability for training and service under Section 4(b)."

*Executive Order No. 9992*
13 F. R. 5033

§ 622.18 "Class IV-C: Aliens. (a) In Class IV-C shall be placed any registrant who is an alien and who has not declared his intention to become a citizen of the United States and who—

(1) Has entered the United States for a specific temporary purpose which would normally be concluded within six months, has not been gainfully employed during his stay in the United States, and continues to pursue the purpose for which he entered; or

(2) Has, under requirements mutually agreeable to the Secretary of State, the Commissioner of Immigration and Naturalization, and the Director of Selective Service, entered the United States temporarily for the purpose of study, teaching, practical training, or research in agriculture, industry, commerce, public health, education, or in related fields, and continues to satisfactorily pursue such endeavor.

(b) In Class IV-C shall be placed any registrant who is an alien and who has not declared his intention to become a citizen of the United States and who is a national of a country with which there is in effect a treaty or international agreement exempting nationals of that country from military service while they are within the United States and for whom an application for deferment has been communicated to the De-

partment of State by the government of that country and has been approved by the Department of State.

(c) In Class IV-C shall be placed any registrant who is an alien who, prior to his induction, has made application to be relieved from liability for training and service in the armed forces of the United States by filing with the local board an Application by Alien for Relief from Military Service (SSS Form No. 130), executed in duplicate. The local board shall forward the original of such form to the Director of Selective Service to the State Director of Selective Service and shall retain the duplicate in the registrant's Cover Sheet (SSS Form No. 101).

(d) In Class IV-C shall be placed any registrant who is an alien and because of his nationality is within a class of persons not acceptable to the armed forces of the United States for training and service.

(e) In Class IV-C shall be placed any registrant who is an alien and has departed from and is no longer residing in the United States. Such alien shall be placed in Class IV-C even though he is a delinquent but this classification shall in no way relieve him from liability for prosecution for violation of the selective service law. If any registrant so classified under this paragraph returns to the United States to reside therein his classification shall be reopened and he shall be classified anew. Issued August 28, 1948.

Harry S. Truman."

*Public Law 51,* 65 Stat. 75, June 19, 1951, 50 USC App. 453 Supp. V (1946 Ed.):

UNIVERSAL MILITARY TRAINING AND SERVICE ACT

Section 1. The Selective Service Act of 1948 (62 Stat. 604), as amended is further amended as follows:

(a) Section 1(a) of such Act is amended to read as follows:

"SECTION 1. (a) This Act may be cited as the 'Universal Military Training and Service Act.'"

(c) Section 3 of such Act is amended to read as follows:

"SEC. 3. Except as otherwise provided in this title, it shall be the duty of every male citizen of the United States, and every other male person now or hereafter in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit registration at such time or times and place or places and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder."

(d) Section 4(a) of such Act is amended to read as follows:

"(a) Except as otherwise provided in this title, every male citizen of the United States and every male alien admitted for permanent residence, who is between the ages of 18 years and 6 months and 26 years at the time fixed for his registration, or who attains the age of 18 years and 6 months after having been required to register pursuant to section 3 of this title, or who is

otherwise liable as provided in section 6(h) of this title, shall be liable for training and service in the Armed Forces of the United States: *Provided,* That each registrant shall be immediately liable for classification and examination, and shall, as soon as practicable following his registration, be so classified and examined, both physically and mentally, in order to determine his availability for induction for training and service in the Armed Forces: Provided further, That any male alien who is between the ages of 18 years and 6 months and 26 years, at the time fixed for registration, or who attains the age of 18 years and 6 months after having been required to register pursuant to section 3 of this title, or who is otherwise liable as provided in section 6(h) of this title, who has remained in the United States in a status other than that of a permanent resident for a period exceeding one year (other than an alien exempted from registration under this title and regulations prescribed thereunder) shall be liable for training and service in the Armed Forces of the United States, except that any such alien shall be relieved from liability for training and service under this title if, prior to his induction into the Armed Forces he had made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President; but any alien who makes such application shall thereafter be debarred from becoming a citizen of the United States."

(1) Section 6(a) of such Act is amended to read as follows:

"(a) Commissioned officers, warrant officers, pay clerks, enlisted men, and aviation cadets of the Regular Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Coast and Geodetic Survey and the Public Health Service; cadets, United States Military Academy; midshipmen, United States Navy; cadets, United States Coast Guard Academy; midshipmen, Merchant Marine Reserve, United States Naval Reserves; students enrolled in an officer procurement program at military colleges the curriculum of which is approved by the Secretary of Defense; members of the reserve components of the Armed Forces, the Coast Guard, and the Public Health Service, while on active duty; and foreign diplomatic representatives, technical attaches of foreign embassies and legations, consuls general, consuls, vice consuls and other consular agents of foreign countries who are not citizens of the United States, and members of their families, and persons in other categories to be specified by the President who are not citizens of the United States, *shall not be required to be registered under section 3 and shall be relieved from liability for training and service under section 4, except that aliens admitted for permanent residence in the United States shall not be so exempted.*"

*Executive Order No. 10292*
September 28, 1951, 16 F. R. 1843

* * *

Sec. 1622.42 Class IV-C: *Aliens.* (a) In Class IV-C shall be placed any registrant who is an alien and who has not been admitted to the United States

for permanent residence and who has not remained in the United States for a period exceeding one year. When such a registrant has been within the United States for two or more periods of less than one year and the total of such periods exceeds one year, he shall be deemed to have remained in the United States for a period exceeding one year. In computing the length of such periods, any portion of one day shall be counted as one full day. When any such registrant has remained in the United States for a period exceeding one year, he becomes liable for training and service in the Armed Forces of the United States and shall be classified as available for military service unless he is found to be eligible for another classification for a reason other than his alien status.

(b) In Class IV-C shall be placed any registrant who is an alien and who has not been admitted to the United States for permanent residence but who has remained in the United States for a period exceeding one year and who has, prior to his induction, made application to be relieved from liability for training and service in the Armed Forces of the United States by filing with the local board an Application by Alien for Relief from Training and Service in the Armed Forces (SSS Form No. 130), executed in duplicate. The local board shall forward the original of such form to the Director of Selective Service through the State Director of Selective Service and shall retain the duplicate in the registrant's Cover Sheet (SSS Form No. 101).

(c) In Class IV-C shall be placed any registrant who is an alien and who is certified by the Department of State to be, or otherwise establishes that he is exempt from military service under the terms of a treaty or international agreement between the United States and the country of which he is a national.

(d) In Class IV-C shall be placed any registrant who is an alien and who has departed from the United States. Such alien shall be placed in Class IV-C even though he is a delinquent but this classification shall in no way relieve him from liability for prosecution for violation of the selective service law. If any registrant so classified under this paragraph returns to the United States, his classification shall be reopened and he shall be classified anew.

*Immigration and Nationality Act 1952,*
Act of June 27, 1952, 66 Stat. 163

Section 101(a)(19): (8 USC 1101(a)(19)) provides:

> "The term 'ineligible to citizenship,' when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at at any time, permanently debarred from becoming a citizen of the United States under Section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 855; 55 Stat. 844), or under Section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605, 65 Stat. 76), or under any section of this Act, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts."

Section 106 (8 USC 1105a) provides that the procedure prescribed by 5 U.S.C.A. Sections 1031-42 shall be:

> "the sole and exclusive procedure for the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 1252(b) of this title * * * (8 U.S.C.A.)".

5 U.S.C.A. Sections 1013-42 provide for the initial judicial review by courts of appeals of specified final orders issued by certain administrative agencies such as the Federal Power Commission, the Secretary of Agriculture, the United States Maritime Commission, and the Atomic Energy Commission.

Section 212(a)(22); (8 USC 1182(a)(22)) provides:

> "(22) Aliens who are ineligible to citizenship, except aliens seeking to enter as nonimmigrants; or persons who have departed from or who have remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency, except aliens who were at the time of such departure nonimmigrant aliens and who seek to reenter the United States as nonimmigrants;"

Section 212(c); (8 USC 1182(c)) provides:

> "(c) Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished

domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of paragraph (1) through (2) and paragraphs (3) and (31) of subsection (a). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 211(b)."

Section 241(a) (1) provides:

"Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

"(1) at the time of entry was within one or or more of the classes of aliens excludable by the law existing at the time of such entry."

Section 315 (8 USC 1426) provides as follows:

"(a) Notwithstanding the provisions of Section 405(b) any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States.

(b) The records of the Selective Service System or of the National Military Establishment shall be conclusive as to whether an alien was relieved or discharged from such liability for training or service because he was an alien."